

JANELLE R. DEETER
GARY B. DEETER
VERNA B. LYONS
HARRY D. LYONS

IBLA 77-579

Decided February 22, 1978

Appeal from decision of the Alaska State Office, Bureau of Land Management, declaring Bird Creek Nos. 1 - 3 placer mining claims, AA-12958 - AA-12560, null and void ab initio.

Affirmed.

1. Mining Claims: Lands Subject to—Mining Claims: Withdrawn Land—Segregation: Filing of Application—State Selections—Withdrawals and Reservations: Generally

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of a state's application to select lands segregates these lands from all subsequent appropriation, including locations under the mining laws.

2. Mining Claims: Lands Subject to—Mining Claims: Withdrawn Land—Withdrawals and Reservations: Effect of

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void ab initio.

APPEARANCES: Janelle R. Deeter, Anchorage, Alaska, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Janelle R. Deeter, et al. (appellants), have appealed from the September 6, 1977, decision of the Alaska State Office, Bureau of

Land Management (BLM), declaring three placer mining claims, Bird Creek Nos. 1 - 3, AA-12958 - AA-12960, located in secs. 23 and 26, T. 11 N., R. 1 W., Seward meridian, Alaska, null and void ab initio. BLM held that the land was subject to state selection application A-053726, filed January 24, 1961, at the time these mining claims were located and accordingly was not available for location under the mining laws. We affirm.

Section 6(b) the Act of July 7, 1958, 72 Stat. 339-343, gave the State of Alaska (the State) the right to select a certain amount of vacant, unappropriated, and unreserved lands in Alaska. On January 13, 1961, the State filed an application assigned serial number AA 053726, to select 9,600 acres under this section, including, inter alia, all of secs. 23 and 26, T. 11 N., R. 1 W., Seward meridian, Alaska. On May 4, 1962, the Anchorage Land Office, Bureau of Land Management (BLM), issued a decision directing publication by the State of notice of this selection. On June 15, 1962, the State filed certification that such notice was published between May 11 and June 14, 1962, in Anchorage, Alaska. On August 21, 1964, BLM issued a decision tentatively approving the State's selection, inter alia, of Secs. 23 and 26, subject to official survey of the land.

On August 14, 1975, Gary B. Deeter filed a letter with BLM protesting approval of the State's selection insofar as it concerns sections 23 and 26, since three mining claims, Bird Creek Nos. 1 - 3, in which Deeter allegedly held an interest, had been staked originally in 1966 by Charles W. Petrie, who relinquished the claims to Mr. and Mrs. Harry Lyons in 1970. Harry Lyons and one Franklin Charles Hislop then relocated and recorded the claims in the Anchorage Recording Office on December 19, 1970. ^{1/} BLM apparently did not respond to Deeter's protest. On June 1, 1977, Deeter filed an inquiry into the status of his protest.

Also on June 1, 1977, Deeter filed documents by which he attempted to record interests in Bird Creek Nos. 1 - 3 in himself, Miss Janelle Deeter, and Mr. and Mrs. Harry D. Lyons, pursuant to the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 et seq., (Supp. 197). BLM assigned serial numbers AA-12958 - AA-12960 to these notices.

^{1/} Janelle Deeter states that since then "The claims were never relocated, just handed down in the family." Other than that statement there is no evidence of any conveyance by Lyons or Hislop to the Deeters.

On September 6, 1977, BLM issued a decision dismissing Deeter's protest and declaring Bird Creek placer mining claims Nos. 1 - 3 null and void ab initio. Inasmuch as Deeter had alleged that he, Miss Janelle R. Deeter, and Mr. and Mrs. Harry D. Lyons held interests in this claim, the decision was issued in their names. Also, since the material submitted by Deeter indicated that Hislop also held an interest therein, BLM included his name in its decision. Janelle and Gary Deeter and Verna and Harry Lyons have appealed from this decision.

[1, 2] Under 43 CFR 2091.6-4 and 2627.4(b), the filing of the State's selection application for sections 23 and 26 on January 13, 1961, segregated these lands from all appropriations, including locations under the mining laws. The State published notice of its selection, as required, within 60 days of service by BLM of its decision directing the State to do so, thus preserving this segregative effect. Appellants' predecessor in interest, Charles Petrie, admittedly did not locate and record these claims until 1966. The land in question was segregated from location under the mining laws as of January 13, 1961, when the State filed its selection application thereon. The land was accordingly not open to mineral location on May 27, 1966, when Petrie located these claims. It is established that a mining claim located on land segregated from mineral entry is properly declared null and void ab initio. Leo J. Hottas, 73 I.D. 123 (1966), aff'd sub nom. Lutzenheizer v. Udall, 432 F.2d 328 (9th Cir. 1970); Sally Lester, 31 IBLA 43 (1977); W. R. Strickler, 27 IBLA 267 (1976). We conclude that BLM properly so held.

Appellants maintain that they have "grandfather rights" to these mining claims. In order to prevail, appellants would have to show that they are successors to an interest in valid mining claims located on this land before its segregation in 1961 by the State's selection. Appellants have failed to do so, admitting that Petrie's interest in these claims originated only in 1966. Although Bird Creek Nos. 1 - 3 were located as early as 1930 by one Frank Lee, and in 1958, one Earl Mathewson and one Harry Scott Harmon also located claims on this land, they are apparent strangers to the record, and appellants failed to show that they are successors to their interests. To the contrary, appellant Janelle Deeter admits that, prior to Petrie's filing in 1966, on which appellants would-be interest is based, there was an interruption in the ownership of these claims, in that "from [1958] until 1966, the claims seem to have been abandoned." The statement of reasons of Harry and Verna Lyons also indicates that appellants' interest dates back only to Petrie's filing in 1966. Thus, it is clear that in 1966, Petrie did not take title to earlier claims which might have been superior to the State's selection, but instead established

entirely new claims. Petrie's claims were made on land segregated from the operation of the mining law and, accordingly, were null and void ab initio.

Appellant Gary Deeter contends that Bird Creek Nos. 1 - 3 mining claims predate the State's selection. He bases this contention on information which he allegedly received in a letter from the State's Department of Natural Resources indicating that the State selected sections 23 and 26 in January 1972. He states additionally that he has been unsuccessful in determining from BLM when selection of the land by the State was "finally approved," thus implying that appellants' claims are valid because they predate final approval.

Although the State amended its selection application in January 1972, the land on which Bird Creek Nos. 1 - 3 mining claims are located was not affected. Despite any suggestion to the contrary, this land had already been selected by the State on January 13, 1961, and this selection thus predated the location of appellants' claim in 1966. Moreover, although the State's selection may not have been "finally approved," the date of final approval is immaterial, since as discussed above, under 43 CFR 2091.6-4 and 2627.4(b), it is the filing of the State selection application with BLM which segregates selected lands from location under the mining laws.

Gary Deeter also argues that, if the State has selected this land, the Department has no jurisdiction over it. This argument is without merit. Until such time as patent to this land is formally issued to the State, it is Federal land, and the Department retains the legal title and the authority and responsibility to administer it in accordance with the public land laws and regulations of the Department. Gary Deeter notes that "[t]he State is well aware of the existence of the mining claims and they have acknowledged their legality as far as the State of Alaska is concerned." It is beyond our authority to comment on whether, if and when title is transferred to the State, appellants then may be able to receive patent to this land from the State. Our only concern here is whether the BLM decision was correct in holding that the claims were null and void. The State, by virtue of having selected the land prior to the location of appellants' claims, has precluded any rights from attaching under the mining laws of the United States.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur.

Martin Ritvo
Administrative Judge

Douglas E. Henriques
Administrative Judge

